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Lost in the Smog

Environmentalists say the energy industry helped write Clear Skies. Yeah? So what else is new?

by JUDITH LEWIS

Surfing the Web some 18 months ago, David Hawkins could hardly believe what he found: a transcript of a speech by a representative of the energy industry's main lobbying group detailing plans to overhaul the country's air-pollution laws to better fit his sector's needs. On April 2001, Quin Shea of the Edison Electric Institute, addressing a convocation of coal people, warned of impending blackouts in California due to "lack of sufficient infrastructure for the transmission of power" (not, as we know now, the market manipulation of big energy companies), foresaw solutions to the energy shortage in "regulatory certainty and stability" legislated by "our party, the Republican Party," and pledged by proxy the Bush administration's cooperation on extending compliance deadlines on some pollutants and redefining others as benign.

"We're taking steps right now to reverse every piece of paper that EPA has put together where they could call CO₂ a pollutant under the Clean Air Act," Shea told his audience. "That's going to be nailed down in the next few months." And indeed, it was: In May 2001, the Bush-Cheney Energy Task Force report officially reversed Bush and Cheney's pre-election pledge to regulate carbon dioxide, which most credible climatologists target as the cause of global warming.

Hawkins, the director of the climate center at the Natural Resources Defense Council (NRDC) in Washington, D.C., saw immediate value in the speech, which was probably transcribed without Shea's knowledge (Shea's office did not return the *L.A. Weekly's* calls for comment). "The speech was an incredibly detailed blueprint," he says, "for the bill that Congress was being asked to support" — the Clear Skies Act, which has been stalled in Congress since 2002. "And the public ought to know who's writing these bills."

Later in the speech, Shea talked about the "big daddies" of policy initiatives affecting the industry, "the ones we need relief on and I'm actually fairly optimistic about," including New Source Review, which monitors pollution controls at new or expanding power plants and the EPA's proposed emissions standards for mercury, "the issue that scares me the most of the ones out there right now," said Shea. "Mercury is the killer," he said (and he wasn't talking about the brain functions of newborn babies). He cautioned his audience that something would have to be done about mercury, but reassured them they could now have a say in whatever new rule was drawn up.

"Let me put it to you in political terms," he said. "The president needs a fig leaf. He's dismantling Kyoto, but he's out there on a limb. He's told his staff, You will come up with something. They're going to do it. Wouldn't you like to be involved in what they put together? We certainly have made the cut that way."

As it turned out, Shea got nearly everything he asked for. In fact, sections of his speech echo in the testimonies of current proponents of Clear Skies in the Senate as they champion the

ideals of regulatory efficiency and low costs to the consumer. Clear Skies imposes no controls on mercury for more than a decade, proposes no regulation of carbon dioxide and allows twice the nitrogen oxide and sulfur dioxide emissions that would be released into the air if the Clean Air Act remained intact. It also extends deadlines for smog and soot by more than a decade. Most of all, it eliminates New Source Review. "Without the New Source provision," says Martin Schlageter of the Coalition for Clean Air, "you don't even get at a lot of the sources of pollution." Clear Skies instead allows coal-fired plants that exceed emissions standards to buy credits from other, less-polluting plants so that they can continue spewing toxins — a solution to the high price of air pollution specifically requested by friends of the industry.

While it comes as no shock to anyone that energy policy, as Congressman Henry Waxman has put it, "was forged in secret meetings with energy companies," environmental groups have had little luck unearthing the actual words to prove it. A lawsuit brought by the Sierra Club and other groups seeking to reveal the industry players in the Bush-Cheney Energy Task Force made it all the way to the Supreme Court, which ruled on the side of the administration. Documents confirming the energy industry's enthusiasm for administration proposals litter the Internet, but their authors typically couch their remarks in words of genuine concern: "This is a critical piece of legislation that achieves the dual goal of dramatically improving air quality and doing so at the least possible cost to the consumer," said James E. Rogers of Cinergy Corporation, an Ohio-based utility that generates much of its electricity from coal. Clear, dot-connecting evidence of the industry's involvement, Hawkins thought, could be critical to blocking the legislation. "I know that the mainstream press made front-page news out of the fact that the industry wrote parts of the bill that was called the Contract With America, that we called the Contract on America," says Hawkins. "I imagined the same would happen here."

With that in mind, Hawkins "shopped the speech around" to various media, but it gained little traction. He also showed it to John Walke, director of the NRDC's Clean Air Project, who considered it that "rare smoking-gun transcript." Walke found the testimony incriminating enough that he used it last week, on February 2, to open his testimony to the Senate Committee on Environment and Public Works during a hearing on the latest incarnation of Clear Skies, now sponsored by Oklahoma Republican James Inhofe, who has called global warming a scam perpetrated by environmentalists on a vulnerable public (and who has also suggested the prisoners at Abu Ghraib may have deserved what they got). "The so-called Clear Skies Bill is the legacy of the plan that the power lobbyist proudly described in 2001," Walke told the committee. "It should not become law."

But aside from a remark from Senator Jim Jeffords urging the committee not to "fulfill the polluter's wish list," there was scarcely any other mention of industry influence over the authoring of Clear Skies in the committee hearing. Ohio Republican Senator George Voinovich insinuated in a response to Walke's testimony that it was rude even to suggest such a thing: "One of the things that bothers me about your testimony is this issue of sinister motives by those of us involved in this bill," he said. "You said, 'the clever way this bill is constructed.' I want you to know that I was the chief environmentalist of the House of Representatives in Ohio. I want you to know that I was the father of the Ohio EPA. I want you to know that when I was governor of Ohio, we moved forward and we got every county to achieve the ambient-air standards."

But would Voinovich want you to know that in his 2004 re-election campaign he received more than \$300,000 from electric utilities, which spent only a sixth of that on his 1998 campaign?

Among his top contributors: Cinergy, American Electric Power, and Timken Company, an auto-parts manufacturer that won then-Governor Voinovich's "Outstanding Achievement in Pollution Prevention Award" in January 1998, a mere six months after it settled a \$2.7 million lawsuit brought by the Ohio EPA for dumping sewage full of oil and zinc into a local waterway.

Jeffords, along with Maine Republican Susan Collins and Joe Lieberman, have just re-introduced a 2003 bill to counter the Clear Skies Act, eliminating the "grandfather" exemption for outdated power plants and imposing much stricter mercury standards. Lieberman and Arizona's John McCain will also bring back their Climate Stewardship Act to regulate carbon dioxide. Walke calls both bills "serious, honest attempts to clean up the power sector more efficiently than under current law," but the "widely shared view is that they will not move in Congress. So there's one solution," Walke concludes — enforce the Clean Air Act. Apparently that's asking a lot: In Bush's first four years, lawsuits against polluters fell by 75 percent.

There was even more bad news for pollution opponents on Monday, when the administration's new budget included a \$450 million cut in EPA funding and projected \$2.4 billion in revenue from drilling in the Arctic National Wildlife Refuge. EPA inspector general Nikki L. Tinsley also came out with a report last weekend confirming earlier accusations by EPA staffers who told the *Los Angeles Times* that the administration's proposal to regulate mercury was written by industry lobbyists. Unlike Walke's revelation last Wednesday (which happened at the same time as the State of the Union speech), Tinsley's report made it into most major papers. If it hasn't become a Gingrich-like national scandal, says the Coalition for Clean Air's Schlageter, that may be because there's just too much of it going on. "These days," he says, "there are only about three dozen stories a day about how the Bush administration is kowtowing to corporate interests. By this time I think people just want to hear something new."